

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

CONCERNED FRIENDS OF FERRY
COUNTY and DAVID L. ROBINSON,

Petitioners,

v.

FERRY COUNTY,

Respondent,

and

RIPARIAN OWNERS OF FERRY COUNTY
and FERRY COUNTY CATTLEMAN'S
ASSOCIATION,

Intervenors.

Case No. 01-1-0019

**ORDER FINDING COMPLIANCE
[Agricultural Resource Lands]**

I. SYNOPSIS

On December 20, 2013, the Board held a Compliance Hearing in Republic, Washington. The Board finds and concludes that Ferry County is in compliance with the requirements of the Growth Management Act relating to the designation of Agricultural Lands of Long Term Commercial Significance under the Growth Management Act.

II. BURDEN OF PROOF

After the Board has entered a finding of noncompliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.¹ After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local

¹ RCW 36.70A.300(3)(b).

1 jurisdiction has achieved compliance.² For purposes of Board review of the comprehensive
2 plans and development regulations adopted by local governments in response to a
3 noncompliance finding, the presumption of validity applies and the burden is on the
4 challenger to establish that the new adoption is clearly erroneous in view of the entire record
5 before the board and in light of the goals and requirements of the GMA.³

6
7 In order to find the County's action clearly erroneous, the Board must be "left with the
8 firm and definite conviction that a mistake has been made."⁴

9 Within the framework of state goals and requirements, the Board must grant
10 deference to local governments in how they plan for growth:

11 In recognition of the broad range of discretion that may be exercised by
12 counties and cities in how they plan for growth, consistent with the
13 requirements and goals of this chapter, the legislature intends for the boards
14 to grant deference to the counties and cities in how they plan for growth,
15 consistent with the requirements and goals of this chapter. Local
16 comprehensive plans and development regulations require counties and
17 cities to balance priorities and options for action in full consideration of local
18 circumstances. The legislature finds that while this chapter requires local
19 planning to take place within a framework of state goals and requirements,
20 the ultimate burden and responsibility for planning, harmonizing the
21 planning goals of this chapter, and implementing a county's or city's future
22 rests with that community.

23 RCW 36.70A.3201 (in part).

24 In sum, during compliance proceedings the burden remains on the Petitioner to
25 overcome the presumption of validity and demonstrate that any action taken by the County
26 is clearly erroneous in light of the goals and requirements of chapter 36.70A RCW (the
27 Growth Management Act).⁵ Where not clearly erroneous and thus within the framework of
28 state goals and requirements, the planning choices of the local government must be granted
29 deference.

30
31 ² RCW 36.70A.330(1) and (2).

32 ³ RCW 36.70A.320(1), (2), and (3).

⁴ *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

⁵ RCW 36.70A.320(2).

III. PROCEDURAL HISTORY

On December 21, 2001, a Petition for Review was filed in Case No. 01-1-0019 alleging *inter alia* noncompliance with the GMA relating to Ferry County's failure to designate and protect Agricultural Lands of Long-Term Commercial Significance. On June 14, 2002, the Board issued a Final Decision and Order finding Ferry County in noncompliance.

On February 8, 2013, the Board issued its Ninth Compliance Order in this case.

On December 20, 2013, the Board held a Compliance Hearing in Republic, Washington involving three coordinated cases: Case Nos. 97-1-0018c, 01-1-0019, and 11-1-0003. The hearing panel deciding these three cases is comprised of Raymond L. Paoella, Presiding Officer, and Board members Charles Mosher and Margaret Pageler. Attending the Compliance Hearing were: attorney Tim Trohimovich, representing Concerned Friends of Ferry County, David L. Robinson, and Futurewise; Deputy Prosecuting Attorney L. Michael Golden, representing Respondent Ferry County; David L. Robinson; and Ferry County Planning Director Irene Whipple.

This Compliance Order decides the compliance issues presented in Case No. 01-1-0019 (Agricultural Lands of Long-Term Commercial Significance). A Compliance Order on February 5, 2014, decided the issues presented in Case No. 97-1-0018c (Fish and Wildlife Habitat Conservation Areas). A separate Compliance Order will be issued in Case No. 11-1-0003.

IV. DISCUSSION

Agricultural Lands of Long-Term Commercial Significance

1. Applicable Law

Each county shall designate where appropriate: "Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1).

1 The term "Agricultural land" is defined by statute as follows:

2 "Agricultural land" means land primarily devoted to the commercial
3 production of horticultural, viticultural, floricultural, dairy, apiary, vegetable,
4 or animal products or of berries, grain, hay, straw, turf, seed, Christmas
5 trees not subject to the excise tax imposed by RCW 84.33.100 through
6 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term
commercial significance for agricultural production.⁶

7 The term "Urban growth" is defined by statute as follows:

8 "Urban growth" refers to growth that makes intensive use of land for the
9 location of buildings, structures, and impermeable surfaces to such a
10 degree as to be incompatible with the primary use of land for the production
11 of food, other agricultural products, or fiber, or the extraction of mineral
12 resources, rural uses, rural development, and natural resource lands
13 designated pursuant to RCW 36.70A.170. A pattern of more intensive rural
14 development, as provided in RCW 36.70A.070(5)(d), is not urban growth.
15 When allowed to spread over wide areas, urban growth typically requires
16 urban governmental services. "Characterized by urban growth" refers to
land having urban growth located on it, or to land located in relationship to
an area with urban growth on it as to be appropriate for urban growth.⁷

17 The term "Long-term commercial significance" is defined by statute as follows:

18 "Long-term commercial significance" includes the growing capacity,
19 productivity, and soil composition of the land for long-term commercial
20 production, in consideration with the land's proximity to population areas,
21 and the possibility of more intense uses of the land.⁸

22 In *Lewis County v. Western Washington Growth Management Hearings Board*, 157
23 *Wn.2d* 488, 502 (2006), the Washington Supreme Court held:

24 [A]gricultural land is land: (a) not already characterized by urban growth (b)
25 that is primarily devoted to the commercial production of agricultural
26 products enumerated in RCW 36.70A.030(2), including land in areas used
27 or capable of being used for production based on land characteristics, *and*
28 (c) that has long-term commercial significance for agricultural production, as
29 indicated by soil, growing capacity, productivity, and whether it is near
30 population areas or vulnerable to more intense uses. We further hold that

31 ⁶ RCW 36.70A.030(2).

32 ⁷ RCW 36.70A.030(19).

⁸ RCW 36.70A.030(10).

1 counties may consider the development-related factors enumerated in WAC
2 365-190-050(1) in determining which lands have long-term commercial
3 significance.

4 RCW 36.70A.170(2) provides that in making agricultural lands designations, counties
5 and cities shall consider the guidelines established by the Department of Commerce
6 pursuant to RCW 36.70A.050(1). Under RCW 36.70A.050, these are "minimum guidelines"
7 that apply to all jurisdictions "to guide the classification" of agricultural lands. The
8 Department of Commerce "minimum guidelines" are codified in WAC Chapter 365-190.

9 WAC 365-190-050(3)(b)(ii) provides that in determining whether lands are used or
10 capable of being used for agricultural production, counties and cities shall use the land-
11 capability classification system of the United States Department of Agriculture Natural
12 Resources Conservation Service as defined in relevant Field Office Technical Guides.
13 These eight classes are incorporated by the United States Department of Agriculture into
14 map units described in published soil surveys, and are based on the growing capacity,
15 productivity and soil composition of the land.
16

17 WAC 365-190-050(3)(c) provides 11 non-exclusive criteria that counties should
18 consider in determining whether the land has long-term commercial significance for
19 agriculture:
20

21 (i) The classification of prime and unique farmland soils as mapped by
22 the Natural Resources Conservation Service;

23 (ii) The availability of public facilities, including roads used in transporting
24 agricultural products;

25 (iii) Tax status, including whether lands are enrolled under the current
26 use tax assessment under chapter 84.34 RCW and whether the optional
27 public benefit rating system is used locally, and whether there is the ability
28 to purchase or transfer land development rights;

29 (iv) The availability of public services;

30 (v) Relationship or proximity to urban growth areas;

31 (vi) Predominant parcel size;

32 (vii) Land use settlement patterns and their compatibility with agricultural
practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby;

- 1 (x) Land values under alternative uses; and
2 (xi) Proximity to markets.

3 When applying the criteria for long-term commercial significance, "the process should
4 result in designating an amount of agricultural resource lands sufficient to maintain and
5 enhance the economic viability of the agricultural industry in the county over the long term;
6 and to retain supporting agricultural businesses, such as processors, farm suppliers, and
7 equipment maintenance and repair facilities."⁹

8
9 Each county shall adopt development regulations to assure the conservation of
10 designated agricultural lands – these development regulations shall assure that the use of
11 lands adjacent to agricultural lands shall not interfere with the continued use, in the
12 accustomed manner and in accordance with best management practices, of these
13 designated lands for the production of food or agricultural products.¹⁰ RCW
14 36.70A.060(1)(b) provides:

15
16 Counties and cities shall require that all plats, short plats, development
17 permits, and building permits issued for development activities on, or within
18 five hundred feet of, lands designated as agricultural lands, forest lands, or
19 mineral resource lands, contain a notice that the subject property is within or
20 near designated agricultural lands, forest lands, or mineral resource lands
21 on which a variety of commercial activities may occur that are not
22 compatible with residential development for certain periods of limited
23 duration. The notice for mineral resource lands shall also inform that an
24 application might be made for mining-related activities, including mining,
25 extraction, washing, crushing, stockpiling, blasting, transporting, and
26 recycling of minerals.

27 Development regulations shall be consistent with and implement the comprehensive
28 plan. RCW 36.70A.130(1)(d).

29 One of the 13 planning goals of the GMA addresses natural resource industries:
30 "Maintain and enhance natural resource-based industries, including productive timber,
31 agricultural, and fisheries industries. Encourage the conservation of productive forest lands
32 and productive agricultural lands, and discourage incompatible uses." RCW 36.70A.020(8).

⁹ WAC 365-190-050(5).

¹⁰ RCW 36.70A.060(1)(a).

1 Under the GMA, "natural resource lands," include agricultural, forest, and mineral resource
2 lands. Natural resource lands are protected not for the sake of their ecological role but to
3 ensure the viability of the resource-based industries that depend on them. Allowing
4 conversion of resource lands to other uses or allowing incompatible uses nearby impairs the
5 viability of the resource industry."¹¹
6

7 **2. Prior Compliance Order**

8 In Case No. 01-1-0019 (February 8, 2013, Compliance Order), the Board found Ferry
9 County out of compliance with the GMA relating to Agricultural Lands of Long-Term
10 Commercial Significance in part as follows:
11

- 12 • Ferry County has not adequately designated Ferry County Agricultural
13 Lands of Long-Term Commercial Significance. By not designating any
14 privately owned lands, none of the grazing lands currently designated by
15 the County are supported by base properties. Also, no Colville
16 Reservation fee lands have been designated. Therefore, the Board finds
17 and concludes that key Ferry County agricultural lands are not being
18 designated and protected as required by RCW 36.70A.170, RCW
19 36.70A.030, RCW 36.70A.060(1)(b), and RCW 36.70A.020 . This is not
20 consistent with Ferry County's Planning Policies and WAC 365-190-
21 050(5), which requires that the result must designate adequate resource
22 lands to maintain and enhance the economic viability of the agricultural
23 industry in the County over the long run and is in violation of RCW
24 36.70A.170, RCW 36.70A.030, RCW 36.70A.060(1)(b), and RCW
25 36.70A.020.
- 26 • Ferry County has made no Findings of Fact as to why it does not intend to
27 designate any private farm land or any fee lands within the Colville Indian
28 Reservation as Agricultural Resource Lands.
- 29 • Ferry County failed to comply with the requirements in RCW 36.70A.170
30 and RCW 36.70A.030 to designate Agricultural Lands of Long-Term
31 Commercial Significance.
- 32 • The Board is left with the firm and definite conviction that a mistake has
been made in Ferry County's failure to designate and conserve
Agricultural Lands of Long-Term Commercial Significance.

¹¹ *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47 (1998) (quoting Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. Puget Sound L. Rev. 867 (1993)).

- Ferry County's Future Land Use Map is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act.

3. Recent Legislative Action by Ferry County

On October 28, 2013, Ferry County adopted two pieces of legislation related to agricultural lands and adopted documents into the record in response to the Board's February 8, 2013, Compliance Order:

- Ordinance No. 2013-03, amending Ordinance No. 2012-04, relating to agricultural lands.¹²
- Development Regulations Ordinance No. 2013-05, amending Ordinance No. 2012-06, relating to the designation and protection of Agricultural Lands of Long-Term Commercial Significance.¹³

4. Positions of the Parties

Petitioners argue that Ferry County has failed to properly designate Agricultural Lands of Long-Term Commercial Significance in the County as a result of errors of law and fact, as a result of the following claims:

- (1) Ferry County's point system for selecting agricultural lands of long term significance has been inconsistently applied. Some lands with poor soil types have been selected for designation while other lands with good soil types have not been selected. For example, one section of land with only 16% of soils classified 4 or better was selected for designation, whereas the bottom lands along the river with 72% of soils classified as 4 or better located in several sections of land were not classified as agricultural lands. The selected land was mostly forest land whereas the unselected land was mostly land currently used for farming.¹⁴
- (2) Ferry County has used weighting criteria to assess lands for designation as agricultural lands of long term commercial significance but because this system has resulted in no private lands being designated does not provide adequate "critical mass" to assure the viability of the agriculture industry over the long term.
- (3) The weighting criteria used by Ferry County is faulty because it 1. Does not address the availability of nearby public services, 2. Requires that all selected lands must be contiguous and that platted parcels of less than twenty acres

¹² Ferry County's 2013 Index to Compliance Report, Attachment 1 (November 22, 2013).

¹³ *Id.*, attachment 3.

¹⁴ IR 23.

cannot be included, 3.Requires the lands to be owned, rather than rented or leased, 4. Excludes land next to residences even if the residence is a farmhouse and 5.Uses an overriding 500 acre block group factor which excludes all land that is not contiguous.

- (4) Since the method to select Agriculture Lands of Long-Term Commercial Significance was inconsistent with Ferry County's Comprehensive Plan and the selection criteria violate the Act, the resulting Ferry County Future Land Use Map is clearly erroneous; and
- (5) Ferry County's Development Regulations are not adequate to protect Ferry County's agricultural lands of long-term commercial significance.

Respondent Ferry County asserts that:

- (1) Its point system for the selection of agricultural lands complies with the GMA and the County has selected adequate lands.
- (2) The law does not require the County to select private lands.
- (3) The County lacks jurisdiction to designate fee lands within the Colville Reservation.
- (4) Although some designated lands have poor soil types, the County does not plan to de-designate those grazing lands.
- (5) The County conferred with the Department of Commerce on the selection of block sizes for farms to address the potential of scatter of agricultural resource lands across the County.

5. Board Analysis – Agricultural Lands of Long-Term Commercial Significance

Ferry County reports there are a total of 749,452 acres of land in agricultural production in Ferry County, with 459,545 acres in National Forest grazing allotments and 19,423 acres of land representing state forest grazing leases.¹⁵ Of the total lands in agricultural production, an estimated 25,215 are privately owned.¹⁶ In addition, Ferry County reports that Colville Tribal Lands constitute 49% of the total land area in Ferry County and that these lands form a significant part of the natural resource base of the County, including tribal lands leased for grazing.¹⁷ An estimated 575,000 acres of Tribal

¹⁵ Ferry County's Index to Compliance Report (October 8, 2012), Attachment 2, p.2.

¹⁶ Ferry County's Index to Compliance Report (October 8, 2012), Attachment 3, p.3.

¹⁷ Ferry County's 2012 Response to Petitioner's Objections (October 2, 2012), p.13.

1 land are in pasture, with an estimated 10,000 acres classified agriculture lands which
2 include hay production. Of the total Tribal land, 104,539 acres are agricultural fee lands.¹⁸

3 Petitioners have the burden to prove noncompliance as to the designation of
4 Agricultural Resource Lands. The challenged actions (Ferry County Ordinances 2013-03
5 and 2013-05) will now be reviewed to determine whether the statutory requirements for
6 designating and conserving Ferry County's Agricultural Resource Lands were considered
7 and complied with.
8

9 **Consistency of Comp Plan and Regulations**

10
11 Petitioners allege Ferry County's Future Land Use Map and amended Criteria for
12 Designating Agricultural Lands of Long-Term Commercial Significance are not consistent
13 with Comprehensive Plan Policies 7.4.30(7) and 7.4.31, in violation of RCW
14 36.70A.130(1)(d) which requires Development Regulations to be consistent with and
15 implement the Comprehensive Plan.

16 Comprehensive Plan Policy 7.4.30(7) provides:

17
18 In determining which lands to designate for long-term commercial
19 agricultural use, the County will comply with the requirements of the Growth
20 Management Act by classifying and designating agricultural land by an area
21 wide process. Lands to be considered for possible designation will include
22 lands not already characterized by urban growth, lands used or capable of
23 being used for agricultural production, and land that has long-term
24 commercial significance for agriculture. The process shall be an objective
analytical process to assess lands potentially suitable for agricultural uses
applied equally to all lands subject to possible designation.¹⁹

25 Petitioners assert that nothing in the Comprehensive Plan Policies calls for use of a
26 point system, nothing excludes lands within a quarter mile of LAMIRDs, nothing requires
27 that agricultural lands be in a contiguous block of 500 acres or more, and long-term
28 conservation easements are not one of the criteria in the Comprehensive Plan.
29
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¹⁸ Ferry County's 2012 Supplemental Index to Compliance Report (November 1, 2012), index 631.

¹⁹ Ferry County Ordinance No. 2013-03, amending Ordinance No. 2012-04, p. 3 (October 28, 2013).

1 In order to satisfy their burden of proof to show a development regulation/plan
2 inconsistency, Petitioners must show that language in the challenged ordinance is
3 inconsistent with language in the comprehensive plan. RCW 36.70A.130(1)(d) requires:

4 Any amendment of or revision to a comprehensive land use plan shall
5 conform to this chapter. Any amendment of or revision to development
6 regulations shall be consistent with and implement the comprehensive plan.

7 WAC 365-196-210(7) defines consistency as follows:

8 "Consistency" means that no feature of a plan or regulation is incompatible
9 with any other feature of a plan or regulation. Consistency is indicative of a
10 capacity for orderly integration or operation with other elements in a system.

11 This Board has held that "Consistency means comprehensive plan provisions are
12 compatible with each other. One provision may not thwart another."²⁰
13

14 In their briefing and arguments, Petitioners have not identified specific language in
15 Development Regulations Ordinance 2013-05 that is inconsistent with language in
16 Comprehensive Plan Policy Sections 7.4.30(6) and 7.4.31. Petitioners have not shown that
17 the criteria in Ordinance 2013-05 are incompatible with or will thwart the language in
18 Comprehensive Plan Policy Sections 7.4.30(6) and 7.4.31. Furthermore, Petitioners did not
19 show how development regulation maps are incompatible with or thwart the policy
20 objectives. Therefore, the Board finds Petitioners have failed to satisfy their burden of proof
21 to show an inconsistency violation under RCW 36.70A.130(1)(d).
22

23 Petitioners have not shown how specific language in Ordinance 2013-05 violates the
24 statutory definition for Agricultural Lands of Long-Term Commercial Significance in RCW
25 36.70A.030(2) and 36.70A.030(10). Finally, Petitioners have not shown how the policy
26 amendments in Ordinances 2013-03 or 2013-05 violate the statutory requirement to
27 designate Agricultural Lands of Long-Term Commercial Significance in RCW 36.70A.170.
28 Therefore, Petitioners have failed to satisfy their burden of proof to show noncompliance as
29 to Policy Sections 7.4.30(6) and 7.4.31 in Ordinance 2013-03 and 2013-05.
30
31

32 ²⁰ *Five Mile Prairie Neighborhood Association, et al. v. Spokane County*, EWGMHB Case No. 12-1-0002, Final Decision and Order (August 23, 2012), at 10.

1 **Designation Criteria**

2
3 Petitioners allege several of the adopted “Criteria for Designating Agricultural Lands
4 of Long-Term Commercial Significance” in Ordinance 2013-05 are not consistent with three-
5 part definition of Agricultural Lands of Long-Term Commercial Significance as provided in
6 RCW 36.70A.170, RCW 36.70A.030, and RCW 36.70A.020. Petitioners also allege the
7 Future Land Use Map is clearly erroneous as it is based upon noncompliant designation
8 criteria.

9
10 Petitioners assert Criterion 1 – “Soil Classification” violates the GMA but Petitioners’
11 briefing challenges how Criterion 1 is *applied* not how Criterion 1 is inconsistent with the
12 agricultural lands definition in RCW 36.70A.030, as interpreted by the Supreme Court in
13 *Lewis County v. Western Washington Growth Management Hearings Board*. As
14 contemplated by WAC 365-190-050(3), Ferry County uses the U. S. Department of
15 Agriculture system of soil classification, Classes I through IV when designating suitable
16 Agricultural Resource Lands.²¹ There is no substantial evidence in the record supporting
17 Petitioners’ assertions that the soil classification criterion is inconsistent with the agricultural
18 lands definition in RCW 36.70A.030.

19
20 Petitioners assert Criterion 3 – “Availability of Public Services” is inconsistent with
21 WAC 365-190-050(3)(c)(iv) because zero points are given to land within a quarter mile of a
22 LAMIRD. However, Petitioners did not adduce evidence to show the County failed to
23 adequately consider “the availability of public services” when it adopted this criterion to help
24 determine which lands to designate as having long-term commercial significance for
25 agriculture. The County determined that potential agricultural land within close proximity to
26 LAMIRDs should be protected since the potential draw of schools, water and sewer districts,
27 medical facilities, etc. place more demand for development in those areas.²²

28
29 Petitioners assert Criterion 4 – “Proximity to an Urban Growth Area” is inconsistent
30 with WAC 365-190-050(3)(c)(v) because zero points are given to land within five miles of
31

32

²¹ Ferry County Ordinance No. 2013-05, Section 9.00, pp. 20-22.

²² *Id.*, p. 23.

1 the Republic Urban Growth Area. The record shows Ferry County has limited land suitable
2 for agricultural use. Petitioners did not demonstrate, based on evidence in the record of this
3 case, that the County failed to consider the land's "relationship or proximity to urban growth
4 areas" as contemplated by WAC 365-190-050(3)(c)(v). The County determined that land in
5 the vicinity of its only urban growth area is subject to population expansion and more
6 intense uses, and a rural buffer between designated agricultural uses and the urban area
7 minimizes adverse impacts of incompatible uses.²³ Under the unique circumstances of this
8 case, Petitioners failed to put into the record the facts necessary to controvert the County's
9 determination.
10

11 Petitioners assert Criterion 5 – "Predominant Parcel/Farm (Ownership) Size" is
12 inconsistent with the GMA based on the undocumented assumption that smaller farms do
13 not have long-term commercial significance. In light of the unique agricultural context
14 present in Ferry County, Petitioners did not point to specific evidence in the record to prove
15 their assertion that "there is no real connection between farm size and long-term commercial
16 significance" in Ferry County. The County responds that cattle grazing, the County's
17 predominant commercial agricultural activity, requires larger land areas. The Board notes
18 there is evidence in the record that, in contrast to other areas of Washington State, the
19 profitability of agriculture in Ferry County is limited due to soils, climate, lack of agricultural
20 land blocks, dependence on government grazing lands, and distance to source of inputs
21 and markets.²⁴
22

23 Petitioners assert Criterion 6 – "Proximity to Markets/Services" is inconsistent with
24 the Comprehensive Plan and RCW 36.70A.070 because, according to Petitioners, Ferry
25 County penalizes farms and ranches located more than 50 road miles from
26 markets/services. However, Petitioners did not adduce evidence to show how the County's
27 analysis was flawed in light of the remote location of Ferry County and the particular facts
28 and circumstances present in Ferry County.
29
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²³ *Id.*, p. 24.

²⁴ Ferry County's Index to Compliance Report (August 25, 2011), Attachment 9.

1 Petitioners assert Criterion 7 – “History of Nearby Land Uses” is inconsistent with
2 WAC 365-190-050(3)(c)(ix) because it does not take into account the type of permit that
3 was issued failing to distinguish farm and ranch homes from other houses. But Petitioners
4 did not show how the County failed to consider nearby land uses in a way that violates WAC
5 365-190-050(3)(c)(ix).
6

7 Petitioners’ allegation that the Future Land Use Map is clearly erroneous, as it is
8 based upon noncompliant designation criteria, must be rejected because Petitioners failed
9 to come forward with sufficient evidence to show that Ferry County’s designation criteria
10 violate the GMA.

11 In addition, Petitioners assert the “Block Group” criterion providing that agricultural
12 lands “should be in a contiguous block of 500 acres or more” is inconsistent with RCW
13 36.70A.070 and with Comprehensive Plan Policies 7.4.30.7 and 7.4.31. The Ferry County
14 Commissioners adopted Findings of Fact providing in pertinent part as follows:
15

16 *Block Size:* This criteria is reduced from 1000 acres to 500 acres as a result
17 of continued consultation with Department of Commerce, at whose
18 recommendation the County engaged in a scatter analysis. For purpose of
19 scatter analysis, leaving all other factors unchanged, the block size is
20 reduced and the effect on contiguous lands subject to potential designation
21 is reconsidered. This is repeated until the lands begin to appear in a
22 scattered fashion across the map. The block size is then increased until the
23 scatter is gone. Department of Commerce has previously indicated in writing
24 that scatter was to be avoided, and meetings after the Ninth Compliance
25 Order was issued confirm that Department of Commerce would support a
26 block size sufficient to eliminate scatter. The particular block size of 500
27 acres is recommended because calculations below that level result in
28 scatter.²⁵
29

30 Petitioners claim the GMA does not direct Ferry County to eliminate scatter. But
31 Petitioners have not come forward with evidence in the record proving that the scatter
32 analysis relating to minimum agricultural land blocks, performed by Ferry County at the

²⁵ Findings of Fact and Conclusions of the Ferry County Board of Commissioners Regarding Adoption of Amendments to the Comprehensive Plan and Development Regulations (October 28, 2013), attached as Exhibit 4 to Ferry County’s 2013 Index to Compliance Report.

1 recommendation of the Department of Commerce, is contrary to any GMA provision or
2 otherwise deficient under the particular facts and circumstances affecting agricultural
3 activities in Ferry County.²⁶

4 In contrast to other agricultural areas of Washington State, Ferry County is unique.
5 There is substantial evidence in the record indicating that Ferry County's viable crop land is
6 quite limited. For example, according to the Washington State Department of Agriculture,
7 out of 39 Washington counties Ferry County is ranked last as to market value of crop and
8 livestock products. Ferry County's total market value is \$3 Million compared to \$1.2 Billion
9 each for Yakima and Grant Counties.²⁷ Crop land is limited due to poor soils, severe
10 winters, short growing season, and sparse rainfall.²⁸ Livestock is the only commercially
11 significant agricultural product; hay is not commercially significant but is accessory to the
12 livestock industry.²⁹ The WSU Ferry County and Colville Reservation Extension stated that
13 the profitability of agriculture in Ferry County is limited due to soils, climate, lack of
14 agricultural land blocks, dependence on government grazing lands, and distance to source
15 of inputs and markets.³⁰ Finally, Ferry County's privately-owned land suitable for agricultural
16 use is very limited due to the fact that 85% of the County is comprised of publicly-owned
17 lands.
18

19
20 Under these unique facts and circumstances present in Ferry County and based on
21 the specific evidentiary record before the Board in this case, the Board finds and concludes
22 the Petitioners failed to come forward with sufficient evidence in the record to satisfy
23 Petitioners' burden to prove that Ferry County Ordinance Nos. 2013-03 and 2013-05 are
24 clearly erroneous in view of the entire record before the Board and in light of the goals and
25 requirements of the Growth Management Act.
26
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28

29 ²⁶ See *Friends of Pierce County, et al. v. Pierce County*, GMHB Case No.12-3-0002c, Final Decision and
30 Order (July 9, 2012), at 55-57, (fragmentation of agricultural resource lands threatens viability of agricultural
31 industry).

32 ²⁷ Ferry County's Index to Compliance Report (August 25, 2011), Attachment 11.

²⁸ Ferry County Comprehensive Plan, Section 12.3.

²⁹ Ferry County Ordinance # 2013-05, Section 9.00, p. 7.

³⁰ Ferry County's Index to Compliance Report (August 25, 2011), Attachment 9.

1 **V. ORDER**

2 Ferry County is in compliance with the requirements of the Growth Management Act
3 relating to the designation and conservation of Agricultural Lands of Long-Term Commercial
4 Significance under RCW 36.70A.170, RCW 36.70A.030, RCW 36.70A.060(1)(b), and RCW
5 36.70A.020. This case is closed.
6

7 Entered this 14th day of February, 2014.
8
9

10 _____
11 Raymond L. Paolella, Board Member
12

13 _____
14 Charles Mosher, Board Member
15

16 _____
17 Margaret Pageler, Board Member
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19 **Note: This is a final decision and order of the Growth Management Hearings Board**
20 **issued pursuant to RCW 36.70A.300.³¹**
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30 ³¹ Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on
31 all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty
days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.